IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 50 of 1991

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL H SHAH

Versus

ARVIND DAHYABHAI PATEL

Appearance:

MR RA MISHRA for Petitioner No. 1-2

RULE SERVED for Respondent No. 1

MR HL JANI, AGP, for Respondent no.2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/01/2004

ORAL JUDGEMENT

1. Heard Mr. R.A. Mishra, learned counsel for the petitioners and Mr. H.L. Jani, learned AGP, who states that he appears for the respondent no.2.

2. The first petitioner is Chairman of Anklav Kelavani Mandal and the second petitioner is Principal of Anklav High School. Respondent no.1 was employed as a

teacher in the aforesaid school. He was declared surplus, but was thereafter absorbed as a secondary teacher in Sardar Patel High School, Karamsad. The respondent no.1, however, made an application to the Secondary Education Tribunal under section 38 of the Gujarat Secondary Education Act (the Act for short), and prayed that he should be paid compensation under Regulation 33 of the Regulation made under the Act.

3. The Tribunal followed the decisions of the Division Bench of this Court in Special Civil Application Nos.506 and 507 of 1980 decided on 12.9.1983 (Coram: N.H. Bhatt and B.S. Kapadia, JJ.) and in Special Civil Application No.1174/84 decided on 1.5.1984 (Coram: B.K. Mehta, Actg. C.J. & R.J. Shah J.), confirming the view taken by the Tribunal that even if, after termination, the employee is absorbed in some other school, he would not lose the right to compensation under Regulation 33. The Tribunal, therefore, allowed the application and directed the petitioner school to pay compensation equal to six months salaries including allowances for the first five years and the further amount of compensation equal to three months basic salary for the other three years of service.

4. The petitioners have, therefore, filed the present petition challenging the said judgement and order of the Tribunal. Rule was issued on 7.1.1991 and the petition was ordered to be heard with Special Civil Application No.5184/89 in which also the same question arose for decision. It appears that Special Civil Application No.5184/89 came up for final hearing on 30th June 2000, and D.P. Buch J., after referring to and relying upon the aforesaid two decisions of the Division Bench holding that the surplus teachers are entitled to compensation under Regulation 33, dismissed the said Special Civil Application. Though the present petition was ordered to be heard along with Special Civil Application No.5184/89, it was not listed for hearing along with the said petition. If it had been placed along with the said SCA, there is no doubt that it would have been dismissed along with the said petition. The Tribunal has followed Division Bench decisions of this Court and it cannot be said that it has committed any error in granting compensation to the respondent no.1 under Regulation 33 of the said Act. There is, therefore, no substance in the present petition. The petition is, therefore, dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

[M.C. PATEL, J.]

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